

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America)	
)	Cr. No. 6:08-117-HMH
vs.)	
)	
Thomas Martilus Smith,)	OPINION & ORDER
)	
Movant.)	

This matter is before the court on Thomas Martilus Smith’s (“Smith”) motion “pursuant to 18 U.S.C. § 3582(c)(1) of sentence reduction, of sentence and failure to review PSR in a timely fashion for a lesser included offense of violence,” which the court construes as a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 because Smith alleges ineffective assistance of counsel claims. (Mot. 1, ECF No. 305.) On March 16, 2021, Smith’s term of supervised release was revoked for new criminal conduct and he was sentenced to 46 months’ imprisonment.

Smith appealed his judgment for revocation of supervised release and his appeal is currently pending. The instant motion was filed on July 25, 2021.¹ Because his direct appeal is still pending, the court lacks jurisdiction to consider Smith’s § 2255 motion. Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58 (1982) (finding that filing a notice of appeal “confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal”), superseded on other grounds by, Fed. R. App. P. 4(a)(4)). As such, Smith’s collateral attack of his conviction and sentence under 28 U.S.C.

¹ Houston v. Lack, 487 U.S. 266 (1988).

§ 2255 is premature. See Pratt v. United States, 129 F.3d 54, 60-61 (1st Cir. 1997). Based on the foregoing, after a thorough review of the facts and pertinent law, the court dismisses Smith's § 2255 motion without prejudice.

Therefore, it is

ORDERED that Smith's § 2255 motion, docket number 306, is dismissed without prejudice.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
July 30, 2021

NOTICE OF RIGHT TO APPEAL

The movant is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.